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November 14, 2013

VIA HAND DELIVERY

Honorable Shira A. Scheindlin
United States District Court
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007

RE: *In re South African Apartheid Litig.*, Case No. 02-md-1499 (SAS):
Request for Dismissal of Claims against Rheinmetall AG

Dear Judge Scheindlin:

We represent Rheinmetall AG ("Rheinmetall") in the above-referenced action. We submit this letter on behalf of Rheinmetall in connection with the November 7, 2013 Order of the U.S. Court of Appeals for the Second Circuit denying the plaintiffs' petition for rehearing and rehearing en banc. In light of that Order, as well as this Court's statements at the September 24, 2013 pre-motion conference, Rheinmetall respectfully requests that the claims against it in this action be dismissed. In support of this request, and without waiving its claim of lack of personal jurisdiction, Rheinmetall joins in the arguments set forth in the letters submitted on November 13, 2013 by Cravath, Swaine & Moore LLP on behalf of IBM and Ford Motor Company, and Arnold & Porter LLP on behalf of Daimler AG.

Like Daimler AG, Rheinmetall is a foreign corporation that has been sued by the plaintiffs over alleged conduct that occurred entirely abroad. Therefore, based on the United States Supreme Court's decision in *Kiobel v. Royal Dutch Petroleum Co.* and the Second Circuit's decision in *Balintulo v. Daimler AG*, the claims against Rheinmetall should be dismissed. *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1669 (2013); *see also Balintulo v. Daimler AG*, 727 F.3d 174, 194 (2d Cir. 2013) ("the defendants [in this case] can obtain the dismissal of all claims now that the Supreme Court in *Kiobel* has made clear that federal courts may not, under the

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ATS, recognize common-law causes of action for conduct occurring in another country."); H'rg Tr. 16 ("[T]he Circuit has already dictated the opinion on extraterritoriality and corporate liability."). In addition, under the law of the Second Circuit, a corporation cannot be liable under the ATS. *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 149 (2d Cir. 2010) (corporate liability cannot form the basis of a lawsuit under the ATS).

If the Court believes that a second pre-motion conference or formal briefing is required in order to dismiss Rheinmetall from this action, Rheinmetall is available for such a conference and will submit such briefing as directed by a briefing schedule of the Court.

Respectfully,



Robert E. Zimet

cc (by Electronic Mail):

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